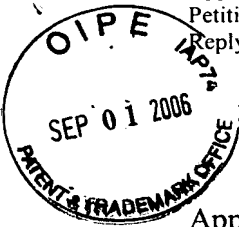


Appln. No. 09/869,647
Petition Dated August 16, 2005
Reply to Notice of Abandonment of July 27, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hiroyasu Karimoto et al.
Appln. No. : 09/869,647
Filed : July 2, 2001
Title : CREATION ASSISTING METHOD AND APPARATUS
UTILIZING ELEMENT INDEXES

Conf. No. : 5920
TC/A.U. : 2176
Examiner : William L. Bashore

Customer No. : 000,116
Docket No. : 33764

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO THE DIRECTOR TO WITHDRAW
HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)**

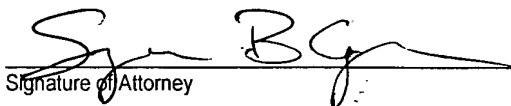
Sir:

This petition is filed under 37 CFR 1.181(a) in response to the Notice of Abandonment dated July 27, 2006 (Paper No. 20060723). The Applicants contend that the application is not in fact abandoned due to the controlling dates for filing an appeal brief. Therefore, the Applicants respectfully request withdrawal of the Examiner's holding of abandonment. No fee is required for this petition. MPEP §711.03(c).

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Suzanne B. Gagnon

Name of Attorney for Applicant(s)


Signature of Attorney

August 29, 2006

Date

The Examiner indicates on the Notice of Abandonment that the application is abandoned in view of no reply being received to the Office letter mailed on August 3, 2005. However, once a Notice of Appeal (NOA) in compliance with 37 CFR 41.31 is filed, the time period for reply set forth in the last Office action is tolled and is no longer relevant for the time period for filing an appeal brief. MPEP §1205.01.

Under 37 CFR 41.37(a), a 2-month time period is provided from the date of the NOA for the appellant to file an appeal brief. The date of receipt of the NOA is the date from which this 2-month time period is measured. The 2-month time period to file the appeal brief may be extended up to 5 months under 37 CFR 1.136(a) because the response period is nonstatutory.

The dates concerning the application are as follows.


08/03/2006	<i>Appeal Brief filed with fee for 5-month extension of time</i>
07/27/2006	Notice of Abandonment
01/19/2006	Notice of Panel Decision from Pre-Appeal Brief Review
01/03/2006	<i>Date of receipt of NOA and Pre-Appeal Brief Request</i>
12/30/2005	NOA filed with Pre-Appeal Brief Request for Review
11/09/2005	Advisory Action
10/21/2005	Response filed to 08/03/2005 Office action
08/03/2005	Office action - action is final

Because the date of receipt of the NOA was 01/03/2006, the 2-month time period to file the appeal brief was 03/03/2006. Furthermore, the time period to file the brief could be extended up to 5 months to 08/03/2006. Since the appeal brief and petition for a 5-month extension of time were filed on 08/03/2006, the appeal brief was filed within the properly extended time period. Thus, the application is not in fact abandoned and the Examiner's holding of abandonment should be withdrawn.

Copies of the Examiner's Notice of Abandonment, the NOA with the PTO stamp date, the postcard receipt for the appeal brief with the PTO stamp dates, and the certificate of mailing for the appeal brief are included herein. The undersigned attorney attests on a personal knowledge basis to the previously timely mailing of the appeal brief in that the correspondence with a certificate of mailing was deposited on August 3, 2006 with the United States Postal Service with sufficient postage as first class mail; that this statement made herein of her own knowledge is true and that this statement made on information and belief is believed to be true; and further that this statement was made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

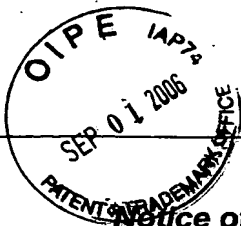
If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33764.

Respectfully submitted,
PEARNE & GORDON LLP

By 
Suzanne B. Gagnon – Reg. No. 48,924

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

Date: August 29, 2006



Notice of Abandonment

Application No.

09/869,647

Examiner

William L. Bashore

Applicant(s)

KARIMOTO ET AL.

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

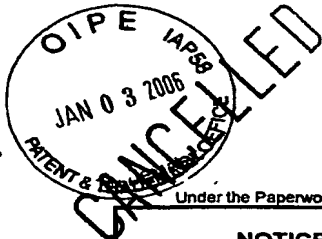
1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 03 August 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Called Applicant's representative at (216) 579-1700 on or about 7/20/2006, left message asking if submission was made within 6 months statutory period of time.

William L. Bashore
WILLIAM BASHORE
PRIMARY EXAMINER

July 23, 2006

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



AF\$
24W

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**NOTICE OF APPEAL FROM THE EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

33764

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]
on December 30, 2005

Signature

Typed or printed name

Suzanne B. Gagnon

In re Application of
Hiruyasu Karimoto

Application Number

09/869,647

Filed

07/02/2001

For

Creation assisting method etc.

Art Unit

2176

Examiner

William L. Bashore

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1))

\$ 500.00

- ☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____
- ☒ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 16-0820. I have enclosed a duplicate copy of this sheet.
Order No. 33764
- ☒ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/98)
- ☒ attorney or agent of record.
Registration number 48924
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

Suzanne B. Gagnon
Signature

Suzanne B. Gagnon
Typed or printed name

216-579-1700
Telephone number

December 30, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

01/05/2006 DEMMANU1 00000025 09869647

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Express Mail: Shroyasu Kramoto, et al. No. 30113
Inventor/Applicant: CHRYSTON INDUSTRIAL METHOD AND APPARATUS
Title: CHRYSTON INDUSTRIAL METHOD AND APPARATUS
Serial No. 04/869,647 Patent No. William Oustore
Filed: 7-2-2001 Examiner: William Oustore
Enclosed Are:
☐ PATENT APPLICATION
____ New Application Transmittal
____ Fee Transmittal (in duplicate)
____ Application Data Sheet
____ Declaration & Power Of Attorney _____ pgs.
____ Pgs. of Claims
____ Sheet(s) of Drawing(s)
____ Formal Informal
____ Continuation or Division
☐ ASSIGNMENT _____ pgs.
____ Transmittal(s)
____ Original _____ Copies
☐ INFORMATION DISCLOSURE
____ PTO-1449 _____ Refs.
☐ AMENDMENT _____
In Response to Paper No. _____

Priority Documents listed below
Other: Appropriated - 36 pages
Control U.S. Patent
6,340,978; 6,694,482; and
6,694,311

CHECK(S) IN THE AMOUNT(S) OF
\$ 2,160.00 \$ 500.00

Client Code 1000 Doc. No. 33764
Int. SEP 01 Date 8-3-2006
ACKNOWLEDGES RECEIPT OF:

CANCELLED
O I P E I A P :
SEP 01 2006
PATENT TRADEMARK OFFICE

Appln. No. 09/869,647
Appeal Brief Dated August 3, 2006
In Support of Notice of Appeal filed January 3, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hiroyasu Karimoto et al.
Appln. No. : 09/869,647
Filed : July 2, 2001
Title : CREATION ASSISTING METHOD AND APPARATUS
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Customer No. : 000,116
Docket No. : 33764

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF

Sir:

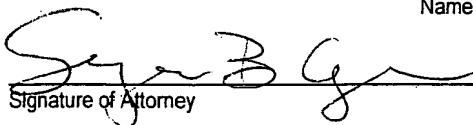
This brief is filed in support of the Notice of Appeal mailed December 30, 2005, which was accorded a filing date of January 3, 2006. Therefore, the two-month period for filing this brief pursuant to 37 CFR § 41.37(a)(1) expired on March 3, 2006. Applicants respectfully request and petition that the response date be extended for five months, up to and including, August 3, 2006. Enclosed is a check in the amount of \$2160.00 for the extension of time fee.

Pursuant to 37 CFR § 41.37(a)(2), this brief is accompanied by the requisite fee of \$500 under 37 CFR § 41.20(b)(2). If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33764.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Suzanne B. Gagnon

Name of Attorney for Applicant(s)


Signature of Attorney

8-3-2006

Date